# Italy

## The law on abusive clauses

by Mario Serio

Law no. 52 of 26 February 1996 has implemented EC Directive 93/13 on abusive clauses (OJ 1993 L95/29) with a series of additions to the Italian civil code.

Adopting provisions is in itself an innovation for the Italian legal system. With the exception of the re-writing, back in 1975, of much family law and of a few articles regarding company law, the civil code framework has stood unaltered since its early days in the 1940s. But other significant changes can be seen as consequences of the said implementation and as new frontiers in the Italian law of contract. This letter focuses attention on the major aspects of the legal changes made and the impact this is having on the whole structure of private law.

First of all, the Italian legislator has adopted with no apparent reluctance the fundamental distinction, directly stemming from the EC directive, between contracts between professionals and consumers and all other contracts. This is a major and long-awaited step in the direction of setting up a brand new contractual category – one that other civil law systems have already conceived – that of consumer contracts, where contracts are made by members of the public whose legal position is expected to be weaker and needs a protective shield against the contractual force the other party is presumed to exercise.

To create a contractual category based upon unequal legal positions undoubtedly opens up new scenarios in contractual law for at least three reasons:

(1) it acknowledges that equality of bargaining power is a myth bound to be swept away

(2) it paves the way to the building of a novel body of measures aimed at filling the gap between consumers and professionals and giving the former the chance to have their voices heard concerning contracts that the latter have unilaterally drawn up; and

(3) it defines the category in question with a sufficient degree of accuracy, encompassing both private persons and legal entities.

The implementation of the EC directive has brought about two further consequences. First, it has been necessary to determine what gives rise to the finding that a clause is abusive (eventually the legislator has adopted the list that was annexed to the directive). Secondly the consumer can now take action to defend himself from an unconscionable bargain because, where a clause is found to be abusive, it is deprived of any effect.

Finally the directive's implementation allows bodies and organisations representing consumers' interests to apply for prohibitory injunctions for the prevention of the use of abusive clauses.

As has been observed, Italian contractual law is now provided with modern and powerful instruments to try and regulate the relations between parties with differing positions: now it is up to the courts' decisions and the development of legal doctrine to fulfil expectations of a fairer law of contract.

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# Japan

## Conferences on Anglo-Japanese law

by Professor Yutaka Tajima

The first international conference of Anglo-Japanese Law was held at the University of Cambridge on 16 and 17 September 1996 and the second international law conference was held at the University of Tsukuba, Tokyo on 1 and 2 October 1997. Both events were successful. The main title of the second conference was Law Reform in Business Law – Perspectives in Anglo-Japanese Law. The conferences are an attempt to combine the academic activities of higher legal institutions, particularly of the Institutes of Advanced Legal Studies located at London, Tokyo and Murdoch. The subjects discussed in the Tsukuba conference were: directors' duties and shareholders' action, insider dealing, corporate governance, commercial arbitration, the uses of trust law, aspects of insurance law, and electronic international contracts.

The subjects chosen for the conference are those areas of law in which there is a need for law reform in Japan. The big bang in the field of financing and banking laws is of course a serious problem. Several reform bills have been proposed and some have already become statutes. For example, the *Bank of Japan Reform Act* 1997 and the *Stock Holding Company Act* 1997 have passed in the Diet. In the past, the Bank of Japan was under the control of the Ministry of Finance and, as a consequence of the legislation, the Bank of Japan will enjoy more independence and more power will be given to it. The *Stock Holding Company Act* 1997 will enable a group of large corporations to harmonise the way they co-operate with each other so that they can cope with international trade competition. Several other legislative reforms are still under consideration.

Cases of economic corruption, which was the main subject of the Cambridge conference, were recently prosecuted in Japan. After reading the news related to these cases, a friend visiting from abroad told me that 'Japan has become democratic at last'.

See p. 11 for Stephen Weatherill's discussion of the implementation of the Directive 93/13 in the UK